

IN SENATE OF THE UNITED STATES.

JUNE 20, 1848.

Submitted, and ordered to be printed.

Mr. WESTCOTT made the following

REPORT:

[To accompany bill H. R. No. 98.]

The Committee of Claims, to whom was referred the House bill No. 98, entitled an "act for the relief of H. D. Johnson," report:

That said bill allows the petitioner, who was a captain's clerk in the navy, five hundred dollars for his services as naval judge advocate in certain courts martial in the Mediterranean squadron, in the years 1844-'45. He charges for thirty-one days, at ten dollars a day, three hundred and ten dollars, and for copying four hundred and thirty pages, at sixty cents per page, two hundred and fifty-eight dollars; in all, five hundred and sixty-eight dollars.

The House committee allow him his whole bill, deducting his pay and allowances as captain's clerk, during the time he acted as judge advocate, which they *estimate* at sixty-eight dollars, and the bill directs the balance of five hundred dollars to be paid to him.

This committee sent all the papers to the Fourth Auditor, and asked his opinion, and received in reply the following letter:

TREASURY DEPARTMENT,
Fourth Auditor's Office, June 15, 1848.

SIR: I have the honor to return the papers in the case of Mr. H. D. Johnson, which you transmitted to me this morning, and to state, in answer to your inquiries, that I cannot but regard the claim which he has made as extravagant. By a regulation of the Navy Department, established in 1831, a compensation of ten dollars a day was allowed to a person, not an officer of the navy, for performing the duties of judge advocate to a naval court martial; but, by the same regulation, only five dollars a day was allowed to an officer of the navy performing the same service. Since the act of March 3d, 1835, regulating the pay of the navy, was passed, it has not been legal to make any allowance to a naval officer, beyond his pay, for the discharge of any duty. The clerk to a

commander is recognized by that act as, for the time being, an officer of the navy, and it is the effect of that law which Mr. Johnson seeks to avoid by an application to Congress. If the restriction which it imposes should be removed, the compensation to which he would be entitled, under the regulations of the department, is five dollars a day, and not ten dollars, as claimed. If, before the act of 1835 was passed, a lieutenant or a captain in the navy had acted as judge advocate, his additional pay would have been but five dollars per diem, and it is difficult to perceive why a captain's clerk should have more. What would be a reasonable compensation to a professional man on shore, leaving his other business to attend upon a court, might be a very unreasonable one for an officer in the service, whose regular pay would not be disturbed by such attendance. It appears to me, therefore, much more proper that the pay of Mr. Johnson as clerk should be permitted to continue, and that he should receive an addition of five dollars a day for his services as judge advocate, than that his pay as clerk should be interrupted, and that he should be allowed ten dollars per diem for such extra services.

The regulations of the Navy Department also granted to an officer of the navy, acting as judge advocate, *five* dollars for every fifteen foolscap pages of record. The number of words requisite to constitute such a page was long since fixed at 180. I have had an examination made of the records of the courts upon which Mr. Johnson served, and, agreeably to the mode of computation just mentioned, the number of pages in the aggregate, instead of being 430, as he estimates them, are but 300.

The papers, which you enclosed to me, are herewith returned.

I have the honor to be, sir, very respectfully, your obedient servant,

A. O. DAYTON.

To the Hon. JAMES D. WESTCOTT, Jr.,
Committee of Claims, U. S. Senate.

This committee are satisfied this letter is entirely correct.

The committee find, by reference to the provisions of the act of 3d of March, 1835, cited by the auditor, that it is peremptory in prohibiting the allowance now asked for. (Vide last clause, 2d section, 4th volume, Statutes at Large, p. 757, ch. 27.) The pay of clerks is specified in the act, and the provision is:

"It is hereby expressly declared that the yearly allowance provided in this act, is all the pay, compensation and allowance that shall be received, under any circumstances whatever, by any such officer or person; except for travelling expenses, or when under orders, for which ten cents per mile shall be allowed."

The committee, therefore, recommend the adoption of the following resolution:

Resolved, That the bill entitled "an act for the relief of H. D. Johnson," do not pass.